




State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 5b1
August 21, 2018

Ken Wagner, Ph.D.
Commissioner

August 21, 2018

TO: Members of the Council on Elementary and Secondary Education

FROM: Ken Wagner, Ph.D., Commissioner 

RE: Authorization of Public Hearing and Comment for the Reformatted Regulations Governing the Education of Children with Disabilities

In order to meet the requirements of the Administrative Procedures Act (as amended in 2016) that all state agency regulations be converted to a standardized format by December 31, 2018 to ensure public access and transparency, the Regulations Governing the Education of Children with Disabilities have been reformatted. In reformatting the Regulations,

- (1) Federal special education regulations have been incorporated by reference in place of identical state regulations;
- (2) The Council's previously adopted Extended School Year Services and Specific Learning Disabilities regulations have been incorporated into the pertinent sections of these Regulations;
- (3) Federal revisions to the "Personnel Qualifications" and "Disproportionality" sections of the federal special education regulations have been incorporated into these Regulations;
- (4) The "When IEPs Must Be In Effect" section of these Regulations has been revised to conform to R.I.G.L. 16-24-1(e);
- (5) The "Public agency responsibility" portion of the "Public Participation" section of these Regulations has been reorganized; and
- (6) Duplicative language in these Regulations has been deleted.

The reformatted Regulations do not contain any substantive changes originated by RIDE. Any substantive changes in the reformatted Regulations arise out of federal law/regulations or state law.

The reformatted Regulations will replace the current Regulations Governing the Education of Children with Disabilities, which are scheduled for repeal.

Because federal law requires that these proposed Regulations undergo public hearing and comment, it is my

RECOMMENDATION: THAT, the Council on Elementary and Secondary Education authorizes for rulemaking purposes the scheduling of public hearing and comment for the reformatted Regulations Governing the Education of Children with Disabilities.

200-RICR-20-30-01

TITLE 200 – BOARD OF EDUCATION

CHAPTER 20 – COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 30 - STUDENT SUPPORTS

PART 01 – REGULATIONS GOVERNING THE EDUCATION OF CHILDREN WITH DISABILITIES

1.1 Authority

- A. This Part is promulgated pursuant to R.I. Gen. Laws Chapter 16-24 and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Chapter 33, 1400 et. seq.)

1.2 Purpose

- A. The Purpose of this Part is to govern the education of children with disabilities in accordance with 34 C.F.R. § 300.1, incorporated in § 1.3.

1.3 Incorporated Materials

- A. This Part hereby adopts and incorporates 34 C.F.R. Part 300 (2012) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- B. Notwithstanding § 1.3(A), the following are not incorporated by reference or have been modified in this Part for application in Rhode Island: 34 C.F.R §§ 300.8(a)(1), 300.8(c)(1)(i), 300.11(c)(1), 300.11(c)(2), 300.34(c)(9), 300.34(c)(16), 300.41, 300.101(a), 300.101(d), 300.102(a)(3)(iv), 300.103(a), 300.103(c), 300.106, 300.111, 300.114, 300.116, 300.118, 300.124, 300.129, 300.130, 300.131(b), 300.146, 300.153(c), 300.156(a), 300.157, 300.168, 300.173, 300.200, 300.201, 300.203, 300.210, 300.229(a), 300.229(c), 300.301(c), 300.303, 300.304(c)(1), 300.311(a), 300.320(a)(2)(i), 300.320(a), 300.320(b), 300.321(a)(4)(iii), 300.322(a), 300.322(b)(2), 300.322(f), 300.323(a), 300.323(c), 300.323(e), 300.501(c), 300.502(b), 300.503(a), 300.504(c), 300.506(a), 300.511(b), 300.514, 300.516(a), 300.516(b), 300.520, 300.530(a), 300.530(b), 300.532(c), 300.536, , 300.601, 300.613(a).

1.4 Definitions

- A. "Act" means the Individuals with Disabilities Education Act in accordance with 34 C.F.R. § 300.4, incorporated by reference above.
- B. "Assistive technology device" has the same meaning as used in 34 C.F.R. § 300.5, incorporated by reference above.
- C. "Assistive technology service" has the same meaning as used in 34 C.F.R. § 300.6, incorporated by reference above.
- D. "Charter School" has the same meaning as used in 34 C.F.R. § 300.7, incorporated by reference above.

- E. "Child with a disability" has the same meaning as used in 34 C.F.R. § 300.8, incorporated by reference above; provided, however:
1. A "Child with a disability" as defined in 34 C.F.R. § 300.8(a)(1) applies to children aged three (3) to twenty-one (21).
 2. Includes children aged three (3) through eight (8) experiencing developmental delays.
 - a. Child with a disability, for children aged three (3) through eight (8) (up to the child's ninth birthday), includes a child who shall qualify for special education and related services when the child is experiencing a developmental delay or a disability, as determined by the evaluation process; and
 - b. Who, by reason thereof, needs special education and related services.
 - c. A developmental delay or disability is defined as a twenty-five per cent (25%) delay and/or score equal to or greater than two standard deviations below the mean in one of the following areas of development; or a score equal to or greater than 1.5 standard deviations below the mean in two (2) or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development.
 3. "Autism", as used in 34 C.F.R. § 300.8 (c)(1)(i) means "Autism Spectrum Disorder," a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Included in the spectrum are: Autism, Pervasive Developmental Disorder Not Otherwise Specified, Rett's Disorder, Asperger's Disorder and Childhood Disintegrative Disorder. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined herein.
 - a. A child who manifests the characteristics of autism spectrum disorder after age three (3) could be diagnosed as having autism spectrum disorder if the criteria of this section are satisfied.
- F. "Consent" has the same meaning as used in 34 C.F.R. § 300.9, incorporated by reference above.
- G. "Day; business day; school day" has the same meaning as used in 34 C.F.R. § 300.11, incorporated by reference above, provided, however:
1. "School day" is defined the same as used in 34 C.F.R. § 300.11 (c)(1), provided however, "school day" includes a partial day that children are in attendance at school for instructional purposes.
 2. "School day" is defined the same as used in 34 C.F.R. § 300.11 (c)(2), provided however, "school day" has the same meaning for all children in school, including children with and without disabilities, except for pre-school aged children with mild to moderate

disabilities for whom a school day shall consist of a minimum of a two and one-half (2 ½) hours.

- a. A school day for pre-school aged children with severe or profound intellectual disability or multiple disabilities shall consist of a minimum of five (5) hours.
- H. "Educational service agency" (ESA) has the same meaning as used in 34 C.F.R. § 300.12, incorporated by reference above.
- I. "Elementary school" has the same meaning as used in 34 C.F.R. § 300.13, incorporated by reference above.
- J. "Equipment" has the same meaning as used in 34 C.F.R. § 300.14, incorporated by reference above.
- K. "Evaluation" has the same meaning as used in 34 C.F.R. § 300.15, incorporated by reference above.
- L. "Excess costs" has the same meaning as used in 34 C.F.R. § 300.16, incorporated by reference above.
- M. "Free appropriate public education" or "FAPE" has the same meaning as used in 34 C.F.R. § 300.17, incorporated by reference above.
- N. "Homeless children" has the same meaning as used in 34 C.F.R. § 300.19, incorporated by reference above.
- O. "Include" has the same meaning as used in 34 C.F.R. § 300.20, incorporated by reference above.
- P. "Indian" and "Indian tribe" has the same meaning as used in 34 C.F.R. § 300.21, incorporated by reference above.
- Q. "Individualized education program" or "IEP" has the same meaning as used in 34 C.F.R. § 300.22, incorporated by reference above.
- R. "Individualized education program team" or "IEP team" has the same meaning as used in 34 C.F.R. § 300.23, incorporated by reference above.
- S. "Individualized family service plan" or "IFSP" has the same meaning as used in 34 C.F.R. § 300.24, incorporated by reference above.
- T. "Infant or toddler with a disability" has the same meaning as used in 34 C.F.R. § 300.25, incorporated by reference above.
- U. "Institution of higher education" has the same meaning as used in 34 C.F.R. § 300.26, incorporated by reference above.
- V. "Limited English proficient" has the same meaning as used in 34 C.F.R. § 300.27, incorporated by reference above.
- W. "Local educational agency" has the same meaning as used in 34 C.F.R. § 300.28, incorporated by reference above.

- X. "Native language" has the same meaning as used in 34 C.F.R. § 300.29, incorporated by reference above.
- Y. "Parent" has the same meaning as used in 34 C.F.R. § 300.30, incorporated by reference above.
- Z. "Parent training and information center" has the same meaning as used in 34 C.F.R. § 300.31, incorporated by reference above.
- AA. "Personally identifiable" has the same meaning as used in 34 C.F.R. § 300.32, incorporated by reference above.
- BB. "Public agency" has the same meaning as used in 34 C.F.R. § 300.33, incorporated by reference above.
- CC. "Related services" has the same meaning as used in 34 C.F.R. § 300.34, incorporated by reference above, provided however:
 - a. "Physical therapy" has the same meaning as used in 34 C.F.R. § 300.34 (c)(9), provided, however, services may also be provided by a qualified physical therapy assistant under the supervision of a qualified physical therapist.
 - b. "Transportation" has the same meaning as 34 C.F.R. § 300.34 (c)(16), provided however, "transportation" includes:
 - (1) Travel to and from school and between schools;
 - (2) Travel in and around school buildings, travel to and from community and work-based instruction sites as determined by the IEP team;
 - (3) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability; and
 - (4) Those requirements in § 1.10.3 of this Part.
- DD. "Secondary school" has the same meaning as used in 34 C.F.R. § 300.36, incorporated by reference above.
- EE. "Services plan" has the same meaning as used in 34 C.F.R. § 300.37, incorporated by reference above.
- FF. "Secretary" has the same meaning as used in 34 C.F.R. § 300.38, incorporated by reference above.
- GG. "Special education" has the same meaning as used in 34 C.F.R. § 300.39, incorporated by reference above.
- HH. "State educational agency" or "SEA" means the Rhode Island Department of Elementary and Secondary Education (RIDE) which is responsible for the general supervision of all education programs for children with disabilities in Rhode Island including all such programs administered by any other state or local agency.

- II. "Supplementary aids and services" has the same meaning as used in 34 C.F.R. § 300.42, incorporated by reference above.
- JJ. "Transition services" has the same meaning as used in 34 C.F.R. § 300.43, incorporated by reference above.
- KK. "Universal design" has the same meaning as used in 34 C.F.R. § 300.44, incorporated by reference above.
- LL. "Ward of the State" has the same meaning as used in 34 C.F.R. § 300.45, incorporated by reference above.
- MM. "Vocational evaluation" is a strength-based, student-centered process, by which information is obtained to assist students in designing individualized education and vocational services to reach their career goals. This includes the use of formal and informal methods to collect information, including: Interest inventories, student interviews, parent interviews, skill and aptitude tests, on-campus and off-campus situational assessments, work samples, vocational evaluations, performance in career related courses and other methods. Vocational evaluation is an ongoing process, not a single test or procedure. The results of Vocational evaluation are shared at IEP meetings, and the information obtained through the Vocational evaluation should be infused into designing the student's educational services and in developing appropriate, measurable post-secondary goals.

1.5 Local Education Agency General Requirements

1.5.1 Free appropriate public education (FAPE) Requirements

- A. An LEA must provide free appropriate public education in accordance with 34 C.F.R § 300.101, incorporated by reference above; provided, however, that each LEA shall:
 - 1. Under 34 C.F.R § 300.101(a), provide FAPE until the child's twenty-first (21st) birthday or until the child receives a regular high school diploma.
 - 2. Ensure FAPE is available in accordance with § 1.5.3 of this Part for children enrolled by their parents in private schools.
 - 3. Provide FAPE for children suspended or expelled from school:
 - a. An LEA need not provide services to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
 - b. In the case of a child with a disability who has been removed from his or her current placement for more than ten (10) school days in that school year, the LEA, for the remainder of the removals, must:
 - (1) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately

advance toward achieving the goals set out in the child's IEP. The child's IEP team determines the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability.

- c. In the case of a child who is removed from his or her current placement to an interim alternative educational setting for reasons described in paragraph (c) (2) and (3) of this section, the LEA must

- (1) Provide services consistent with 34 C.F.R. § 300.530, regarding determination of the appropriate interim alternative educational setting, if the removal is:

- (AA) For drug or weapons offenses under 34 C.F.R. § 300.530 of this Part; or

- (BB) Based on a hearing officer determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement, consistent with 34 C.F.R. § 300.532.

- B. The limitation-exception to FAPE for certain ages shall be in accordance with 34 C.F.R. § 300.102, incorporated by reference above; provided, however:

- 1. Under 300.102(a)(3)(iv), the term "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).

- C. FAPE-methods and payments are required in accordance with 34 C.F.R. § 300.103, incorporated above; provided, however:

- 1. Under 34 C.F.R. §300.323(a), each public agency may use whatever State, local, Federal, and private sources of support available in the State to meet the requirements of this part.
 - 2. Under 34 C.F.R. § 300.323(c), the LEA must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

- D. Residential placement shall be provided in accordance with 34 C.F.R. § 300.104, incorporated by reference above.

- E. Assistive technology shall be provided in accordance with 34 C.F.R. § 300.105, incorporated by reference above.

- F. Extended school year services shall be made available in accordance with 34 C.F.R. § 300.106, incorporated by reference above. In addition to the requirements set forth in 34 C.F.R. § 300.106, each public agency must also meet the following extended school year standards:

1. Extended school year services eligibility is determined by the IEP team through regression and recoupment analysis of the severity of academic achievement and/or functional skill regression a child experiences as a result of an interruption in special education services, the amount of time required to recoup the prior level of skill, likelihood of retention of learned skills, rate of progress during the school year, and whether meaningful progress on IEP goals is likely to be significantly jeopardized if ESY services are not provided.
 - a. IEP team decisions regarding extended school year services are based upon a variety of data including retrospective data, predictive data, peer reviewed research, evidenced based best practice and other critical factors.
 - b. IEP team considerations include, but are not limited to the following possible factors when determining the child's individual need for ESY services:
 - (1) the nature and/or severity of the child's disability;
 - (2) the child's rate of learning;
 - (3) the degree of progress towards IEP goals and objectives or for children transitioning from IDEA Part C services (Early Intervention) to IDEA Part B services, consideration of the degree of progress toward Individual Family Service Plan (IFSP) outcomes;
 - (4) the child's stereotypic, ritualistic, aggressive or self-injurious interfering behaviors;
 - (5) the physical needs of the child;
 - (6) emerging skills and breakthrough opportunities;
 - (7) the ability of the child to interact with typically developing peers;
 - (8) the child's post-school outcomes and vocational needs;
 - (9) other special circumstances as determined by the IEP team.
 - c. ESY instruction is focused on those specific IEP goals and objectives severely impacted by extended breaks in instruction.
- G. Nonacademic services shall be provided in accordance with 34 C.F.R. § 300.107, incorporated by reference above.
- H. Physical education services shall be provided in accordance with 34 C.F.R. § 300.108, incorporated by reference above.
- I. Program options shall be provided by each public agency in accordance with 34 C.F.R. § 300.110, incorporated by reference above.
- J. Child find.

1. General. Each LEA must have in effect policies and procedures to ensure that all of the following children with disabilities are identified, located, and evaluated, regardless of the severity of their disabilities, and who are in need of special education and related services:
 - a. All children aged three (3) through twenty-one (21) residing in the LEA, including children with disabilities who are homeless children or are wards of the state, excluding, children parentally placed in private, including religious, schools located outside the LEA that meet the definitions under 34 C.F.R § 300.13 and 34 C.F.R. § 300.36;
 - b. All children with disabilities, regardless of residence, enrolled by their parents in private, including religious, schools that are located in the district served by the LEA and meet the State definition of an elementary or secondary school, in accordance with 34 C.F.R § 300.131 (Child Find for parentally-place private school children with disabilities); 34 C.F.R § 300.13 (Elementary School); and 34 C.F.R § 300.36 (Secondary School); and
 - c. For children aged three (3) through five (5) years, the screening procedures must be consistent with the Rhode Island Guidelines for Implementing Child Outreach Screening, as adopted by the Rhode Island Board of Regents.
2. Children currently served. Each local education agency must have in effect policies and procedures to ensure that a practical method is developed and implemented to determine which children are currently receiving needed special education and related services.
3. Provisions implementing child find. The following provisions apply with respect to implementing the child find requirements of this section:
 - a. Documents relating to child find. Each LEA must have on file the policies and procedures described in paragraphs (1) and (2) below, including:
 - (1) The name of the LEA Representative responsible for coordinating the planning and implementation of the policies and procedures under paragraph (1) of this section;
 - (2) The name of each agency that participates in the planning and implementation of the child find activities and a description of the nature and extent of its participation;
 - (3) The number of children with disabilities within each disability category that have been identified, located, and evaluated; and
 - (4) Information adequate to evaluate the effectiveness of those policies and procedures; and
 - (5) A description of the method the LEA uses to determine which children are currently receiving special education and related services.

- b. Child find for children from birth through age two (2) (until the child turns age three) with the Department of Human Services as the lead agency administering Part C of the Act. The RI Department of Human Services is the lead agency for administering Part C of the Act, and implements a comprehensive system of child find activities including:
 - (1) Prior notice;
 - (2) Universal screening;
 - (3) Acting on direct referrals; and
 - (4) Evaluation and assessment procedures.
 - 4. Interagency agreement. The RI Department of Education and the RI Department of Human Services have executed interagency agreements which serve as the primary mechanism through which universal screening is conducted and which specify the administrative, fiscal, and programmatic responsibility of each department relative to Child Find activities. The use of an interagency agreement or other mechanism for providing for the Early Intervention lead agency's participation does not alter or diminish the responsibility of the LEA to ensure compliance with the requirements of this section.
 - 5. Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of these regulations.
- K. Individualized education programs (IEP) shall be provided by each public agency in accordance with 34 CFR § 300.112, incorporated by reference above.
- L. Routine checking of hearing aids and external components of surgically implanted medical devices shall be conducted in accordance with 34 C.F.R. § 300.113, incorporated by reference above.

1.5.2 Least Restrictive Environment (LRE) requirements

- A. Except as provided in 1.7.5(A) (34 C.F.R. § 300.324(d)(2)) (regarding children with disabilities in adult prisons), each public agency must ensure that:
 - 1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and
 - 2. Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- B. Continuum of alternative placements shall be in accordance with 34 C.F.R. § 300.115, incorporated by reference above.
- C. Continuum of special education placements and services.

1. Each public agency shall make available to children with disabilities the following continuum of special education programs:
 - a. Placement of the child in a general education class with special education consultation, supplementary aids and services or part-time services in a special class. The special educator(s) shall consult with the child's parent and general education teachers.
 - b. Placement in a special class integrated in a school district building. Placement must be based on similarity of student strengths and needs for the purpose of ensuring academic achievement and functional performance. Such classes must be taught by a special education teacher, together with other appropriately certified specialists providing related services. These professionals shall also consult with the child's parents.
 - c. Home or hospital instruction provided by special education teachers, general education classroom teachers or regular education, subject-matter teachers, together with other appropriately certified specialists providing related services, as needed; to any child with a disability whose health status warrants home or hospital instruction.
 - d. Special education day school placement in a separate public school or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education.
 - e. Special education residential school placement in a separate public or non-public facility whose special education program has been approved by the Rhode Island Commissioner of Elementary and Secondary Education.
 - f. A continuum of services must be available to enable each child ages fourteen (14) to twenty-one (21) or earlier if appropriate, or upon graduation with a regular high school diploma, to achieve his or her measurable post-secondary goals as defined in §§ 1.4(JJ) and 1.7.4(A)(2).
- D. Continuum of special education placements and services for children aged three (3) through five (5).
 1. General. All preschool children (ages 3 through 5) with disabilities shall receive an IEP or IFSP suited to their particular needs which shall include, but not be limited to, language development, symbol recognition, communication and socialization skills, health, perceptual and sensory-motor development, art, music and physical education.
 2. Each public agency must make available to each child with a disability, aged three (3) through (5) years old, a program which represents the least restrictive environment (LRE) and the appropriate placement given the student's individualized education program (IEP) or individualized family service plan (IFSP). Unless the individualized education program (IEP) or individualized family service plan (IFSP) requires otherwise, special education and related services shall be provided in that setting in which the child

would normally be placed if he or she did not have a disability. The SEA has guidelines to assist IEP teams in determining delivery of services decisions. The array of educational settings shall include the following placement opportunities:

- a. Temporary placement in any educational setting as described in this Section, for a period of no more than thirty (30) days, when necessary to aid in determining educational objectives and the appropriate placement for an eligible child with a disability. Prior to such placement, an interim individualized education program (IEP) or individualized family service plan (IFSP) shall be developed which specifies the conditions and timelines for the temporary placement. Upon the close of the interim period, an individualized education program (IEP) or individualized family service plan (IFSP) meeting shall be conducted to finalize the child's individualized education program (IEP) or individualized family service plan (IFSP).
- b. Placement in a general early childhood setting with on-site consultation by an early childhood special educator and/or provider(s) of related services to the general education teacher and/or to the family and, when indicated by the individualized education program (IEP) or individualized family service plan (IFSP), direct intervention with the child. Early childhood settings include, but are not limited to: general kindergarten classes, public and non-public preschools, Head Start programs, early care and education centers, home/early childhood combinations, home/Head Start combinations, or home based child care, which meet federal or state requirements. In these settings, children receive all of their special education and related services in programs designed primarily for children without disabilities.
- c. Placement in an integrated preschool class designed primarily for preschool children with disabilities and including children without disabilities that is located in a public school building. The maximum class size shall be no more than fifteen (15) children with less than fifty percent (50%) being children with disabilities. The staff shall include at a minimum, an early childhood special educator and teacher assistant with the provision of additional staff as indicated by the needs of the children and their individualized education programs (IEPs) or individualized family service plans (IFSPs.)
- d. Home-based special education and, where appropriate, related services provided to the child together with his or her parent(s) or primary care provider. Home visits shall include instruction for the parent or primary care provider, demonstration of specific tasks and provision of developmental toys and materials for the parents or primary care provider to use with the child. A home-based program may supplement placement in another program option or, for pre-kindergarten-aged students be available as the primary placement, unless the child's needs, as determined by the evaluation process, can more appropriately be met in a group setting. When implemented as the primary placement, home visits shall be scheduled at least weekly and in accordance

with the individualized education program (IEP) or individualized family service plan (IFSP.)

- e. Placement at home or in a general early childhood setting with supplementary placement in an early childhood special education setting for a portion of the school day or week.
- f. Full-time placement in an early childhood special education setting which is located in a public school building or other community based early childhood facility.
- g. Placement in a special education day school.
- h. Placement in a residential special education school.

E. Continuum of special education placements and services: homebound and hospital instructional programs.

- 1. General. In determining the educational services for a child with a disability in homebound and hospital instruction programs, the IEP Team shall determine what constitutes an appropriate program, including the consideration of whether the child is in need of an extended school year program, as required by § 1.5.1(F).
- 2. Homebound Instructional Programs.
 - a. The home atmosphere shall be conducive to learning. Special conditions recommended by the physician shall be observed.
 - b. The minimum number of hours of instruction shall be five (5) hours per school week at the elementary level of education and six (6) hours at the secondary level of education unless fewer hours are recommended by the physician. Depending on the physical condition of the child, a number of instructional hours greater than the minimum number of hours required per week is permissible.
 - c. A complete record of homebound teaching activities shall be maintained.
 - d. Homebound instruction shall be coordinated with the work of the regular education class so that return to school (if this is possible) will require little readjustment, or so that the long-term homebound instruction may approximate the regular education curriculum to the highest degree possible.
 - e. The use of a home-to-school telephone system or other appropriate technological system should be employed whenever possible. In such cases, however, a teacher should provide instruction in the student's home for at least one (1) hour each school week.
 - f. Children with disabilities who receive homebound instruction shall be provided with summer tutoring, if they are unable to complete their current school year because of health reasons.

- g. Teachers of homebound instruction shall hold Rhode Island teaching certificates in the area appropriate to educate and provide related services to the student with a health impairment, a physical disability or to the student's disability condition.
 - h. School districts shall not use home tutoring programs as a substitute for in-school programs nor as a means of excluding students with disabilities from in-school programs.
3. Hospital Instructional Programs.
- a. Hospital special education instructional programs shall meet the same criteria as that specified for homebound instructional programs when dealing with acute medical problems. In addition, private and State hospitals wishing to establish their in-patient educational programs or out-patient instructional programs must be approved by the Rhode Island Commissioner of Elementary and Secondary Education before they may operate such programs in Rhode Island and shall follow the same procedure and criteria for approval as outlined for non-public schools and State-operated school programs.
 - b. Certification of Hospital Teaching Personnel.
 - c. All teachers employed in hospital programs shall be trained and certified to provide special education in the area of basic disability for which the hospital program is established.
- F. Placements shall be in accordance with 34 C.F.R. § 300.116, incorporated by reference above; provided, however:
- 1. Under 34 C.F.R. § 300.116(a), in determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that:
 - a. The placement decision:
 - (1) Is made by an IEP team, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - (2) Is made in conformity with the LRE provisions of this section, including §1.5.2(A) - (H), and
 - 2. In addition to the requirements of 34 C.F.R. § 300.116:
 - a. In providing services to children with disabilities in special classes the age range of the children shall not exceed four (4) years. An exception to this requirement can be made only by the IEP team based on the documented needs of the child and with the agreement of the parents of all of the other students in the class where placement is sought.

- G. Nonacademic settings shall be provided in accordance with 34 C.F.R. § 300.117, incorporated by reference above.
- H. Each public agency shall ensure that LRE requirements are met in accordance with 34 C.F.R. § 300.118, incorporated by reference above.
- I. Technical assistance and training activities shall be carried out by each public agency in accordance with 34 C.F.R. § 300.119, incorporated by reference above.
- J. Transition of children from Part C of the Act to preschool programs:
 - 1. Not later than the child's third (3rd) birthday, an IEP or IFSP must be in effect for each eligible child with a disability.
 - 2. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin.
 - 3. At the time the child turns thirty (30) months, a transition team minimally consisting of a resident school district representative, the parent(s), an Early Intervention Program representative, and at the discretion of the parent(s) or agencies, other individuals who have knowledge or expertise regarding the child (including child care, Head Start, advocates and home provider, other family members, and related services personnel) must meet to develop a written plan which includes the activities to take place during the transition period, the timelines in which the activities will occur, and the persons responsible for carrying out these activities. Each LEA must respond within ten (10) school days to the Early Intervention (EI) transition notice and send an LEA representative to the thirty (30) month transition team meeting.
 - 4. These activities will occur over a six (6) month period of time and will reflect the individual needs of the child and the participation of the child's family. For a child who will become thirty-six (36) months of age between May and September, these activities will occur on an adjusted timeline that will allow for the participation of all parties, and to ensure that the child will begin receiving special education and related services upon the opening of school, or when the child turns thirty-six (36) months if a child is eligible for an extended school year program.
 - 5. As part of the transition plan, if a child is determined to be ineligible for special education services, the transition team will refer the family and child to appropriate community resources.
 - 6. The LEA representative must have authority to commit resources.

1.5.3 Children with Disabilities Enrolled by Their Parents in Private Schools

- A. FAPE for children with disabilities enrolled by their parents in private schools:
 - 1. Definition of "private school children with disabilities."
 - a. As used in this part, private school children with disabilities means children with disabilities, beginning at age three (3), enrolled by their parents in private,

including religious, schools or facilities that meet the definition of elementary school in § 1.4(I) or secondary school in § 1.4(DD), other than children with disabilities covered under §1.5.4.

2. Services Available Under State Law.

- a. As required by R.I. Gen. Law § 16-24-1, each private school child with a disability is entitled to FAPE provided by the school committee of the city or town where the child resides. A parent of a private school child may seek FAPE by requesting from the LEA of residence an initial evaluation to determine if the child is a child with a disability. The LEA of residence shall evaluate and determine the child's eligibility for FAPE. A determination of eligibility for services under §1.5.3(B) - (P) shall not be a prerequisite to a request for FAPE. Absent a request for FAPE, the LEA of residence will not be considered to be in violation of the requirement to make FAPE available to the private school child with a disability.

3. Provision of services—basic requirement.

- a. General. Each LEA of residence shall make FAPE available to eligible students with disabilities who are enrolled by their parents in private schools. The LEA of residence shall determine the student's eligibility for FAPE.
- b. LEA Responsibility. Each LEA of residence shall ensure that, an IEP is developed and implemented for each eligible child with a disability enrolled by their parents in a private school and that the child is afforded all of the rights of a child with a disability served by the LEA.

4. Services determined.

- a. A private school child with a disability has a right to FAPE.
- b. Decisions about the services that will be provided to private school children with disabilities must be made by the IEP team.

5. Services provided.

- a. General. The services provided to private school children with disabilities by the LEA must be provided by personnel meeting the same standards as personnel providing services in the public schools.
- b. Services provided in accordance with an IEP.
 - (1) Each private school child with a disability who has been designated by the LEA of residence to receive special education and related services must have an IEP.

B. Definition of parentally-placed private school children with disabilities.

1. Parentally-placed private school children with disabilities has the same meaning as used in 34 C.F.R. § 300.130, incorporated by reference above; provided, however, the definition includes children with disabilities beginning at age three (3).

- C. Each LEA must conduct child find in accordance with 34 C.F.R. § 300.131. In addition to the requirements of 34 C.F.R. § 300.131 (b), each LEA must provide notice to parents of the right to FAPE under §1.5.3(A).
- D. Services for parentally-placed private school children with disabilities shall be provided in accordance with 34 C.F.R. § 300.132, incorporated by reference above.
- E. Expenditures shall be in accordance with 34 C.F.R. § 300.133, incorporated by reference above.
- F. Consultation shall take place in accordance with 34 C.F.R. § 300.134, incorporated by reference above.
- G. Written affirmation shall be required in accordance with 34 C.F.R. § 300.135, incorporated by reference above.
- H. Compliance shall take place in accordance with 34 C.F.R. § 300.136, incorporated by reference above.
- I. Equitable services shall be determined in accordance with 34 C.F.R. § 300.137, incorporated by reference above.
- J. Equitable services shall be provided in accordance with 34 C.F.R. § 300.138, incorporated by reference above.
- K. Location of services and transportation shall be determined in accordance with 34 C.F.R. § 300.139, incorporated by reference above.
- L. Due process complaints and State complaints shall be in accordance with 34 C.F.R. § 300.140, incorporated by reference above.
- M. The requirement that funds not benefit a private school shall be in accordance with 34 C.F.R. § 300.141, incorporated by reference above.
- N. Use of personnel shall be in accordance with 34 C.F.R. § 300.142, incorporated by reference above.
- O. The prohibition of separate classes shall be in accordance with 34 C.F.R. § 300.143, incorporated by reference above.
- P. Property, equipment, and supplies shall be provided in accordance with 34 C.F.R. § 300.144, incorporated by reference above.

1.5.4 Children with Disabilities in Private Schools Placed or Referred by Public Agencies

- A. Sections 1.5.4(B) and 1.5.4(C) shall apply in accordance with 34 C.F.R. § 300.145, incorporated by reference above.
- B. Responsibility of LEA.
 - 1. Each LEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

- a. Is provided special education and related services:
 - (1) In conformance with an IEP that meets the requirements of §§ 1.7.4(A) through 1.7.5(B) and
 - (2) At no cost to the parents;
 - 2. Is provided an education that meets the standards that apply to education provided by the SEA and the LEA including the requirements of this part, except for the personnel requirements at § 1.5.8(A); and
 - 3. Has all of the rights of a child with a disability who is served by a public agency.
- C. Implementation by SEA shall be in accordance with 34 C.F.R. § 300.147, incorporated by reference above.

1.5.5 Children with Disabilities Enrolled by Their Parents in Private Schools When FAPE is at Issue

- A. Placement of children by parents when FAPE is at issue shall be in accordance with 34 C.F.R. § 300.148, incorporated by reference above.

1.5.6 State Complaint Procedures

- A. The State has adopted complaint procedures in accordance with 34 C.F.R. § 300.151, incorporated by reference above.
- B. The State complaint procedures shall include those set forth in 34 C.F.R. § 300.152, incorporated by reference above.
- C. Complaints shall be filed in accordance with 34 C.F.R. § 300.153, incorporated by reference above; provided, however:
 - 1. Under 34 C.F.R. § 300.153(c), the complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received in accordance with these regulations unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under these regulations and in accordance with § 1.5.6(A).

1.5.7 Methods of Ensuring Services

- A. Methods of ensuring services shall be in accordance with 34 C.F.R. § 300.154, incorporated by reference above.

1.5.8 Additional Eligibility Requirements

- A. Personnel qualifications shall be in accordance with 34 C.F.R. § 300.156, incorporated by reference above; provided, however:
 - 1. Under 34 C.F.R. § 300.156(a):

- a. The LEA must ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- b. Certification-Licensure. All professional personnel, whether employed on a full-time or part-time basis, or under a contractual agreement, for whom certificates or licenses are required by State law and/or regulations, shall hold appropriate certificates or licenses. Where no such mandates exist, such personnel shall show evidence satisfactory to RIDE that they have appropriate professional training and/or experience to perform satisfactorily and successfully in their respective areas.

B. Personnel Requirements

1. Staffing. It is the responsibility of the public agency to assess the needs of students with disabilities, assign personnel in accordance with those needs, and evaluate the delivery of services to determine whether the agency's program conforms to the requirements of this Part and the IDEA.
2. Special Education Administrators. Every public agency shall employ a sufficient number of special education administrators necessary to carry out the requirements of this Part and the IDEA. Any public agency may enter into an agreement with one or more other public agencies to employ the required number of special education administrators in operation of a regional special education program
3. Other Personnel. Every public agency shall employ a sufficient number of professionals, paraprofessionals, and assistants to meet all of the evaluation and placement timelines, as well as each student's individual service needs identified through the evaluation, and resulting in the individualized education program (IEP). Caseloads shall be assigned by the public agency in a prudent and equitable manner, based on the time required to properly serve the needs of the students with disabilities involved, as determined by the evaluation process and resulting in the IEP.
4. Reporting. Every public agency shall provide RIDE with the agency's policy to determine the number and types of personnel required under this section, and a description of the public process the agency used to develop its policy. Every public agency shall report annually to RIDE the agency's plan, pursuant to said policy, to comply with this regulation, including the number of full-time equivalent positions of special education administrators, special education teachers, school psychologist, speech/language pathologists, school social workers, and physical and occupational therapists, respectively, it uses to meet the needs of students with disabilities.
5. The Commissioner of Education may establish a class size maximum and/or staffing ratios for any group(s) of personnel, class, school, or district, if the commissioner determines that:

- a. The plan submitted by the district under paragraph (4) is insufficient to fulfill the requirements of this section,
 - b. The district has failed to comply with the terms of the plan submitted by the district under paragraph (4), or
 - c. Student performance within or throughout the district warrants intervention as dictated through R.I. Gen. Laws § 16-7.1-5
6. Any decision made under this section by the Commissioner may be appealed under R.I. Gen. Laws § 16-39-3.

1.5.9 State Advisory Panel

- A. State advisory panel
 - 1. RIDE shall establish and maintain an advisory panel in accordance with 34 C.F.R. § 300.167, incorporated by reference above.
- B. Membership
 - 1. General. The advisory panel, consisting of members appointed by the Commissioner of Elementary and Secondary Education, shall meet the requirements of 34 C.F.R. § 300.168, incorporated by reference above.
- C. Duties
 - 1. The duties of the advisory panel shall be in accordance with 34 C.F.R. § 300.169, incorporated by reference above.

1.5.10 Other Provisions Required for State Eligibility

- A. The requirements regarding the overidentification and disproportionality shall be met in accordance with 34 C.F.R. § 300.173, incorporated by reference above; provided, however:
 - 1. The LEAs identified as having disproportionality must comply with the provisions of § 1.9.3 of this Part.
- B. Mandatory medication shall be prohibited in accordance with 34 C.F.R. § 300.174, incorporated by reference above.

1.6 Local Educational Agency Eligibility

- A. An LEA's condition of assistance shall be in accordance with 34 C.F.R. § 300.200, incorporated by reference above. In addition:

1. An LEA is eligible for assistance under Chapter 16 of the Rhode Island General Laws for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions as set forth in this Part.
- B. The LEA shall maintain consistent policies in accordance with 34 C.F.R. § 300.201, incorporated by reference above, and have on file with RIDE, policies, procedures, and programs that are consistent with State policies and procedures.
- C. Use of amounts.
 1. General. The use of amounts provided to the LEA under Part B of the Act shall be in accordance with 34 C.F.R. § 300.202, incorporated by reference above.
- D. Maintenance of effort.
 1. General. Funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.
 2. Standard.
 - a. Except as provided in paragraph (2)(b) of this section, the SEA shall determine that an LEA complies with paragraph (1) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
 - (1) Local funds only.
 - (2) The combination of State and local funds.
 - b. An LEA that relies on paragraph (2)(a)(1) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (2)(a)(1) of this section was used to establish its compliance with this section.
 - c. The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (1) of this section.
- E. Schoolwide programs under Title I of the ESEA shall be in accordance with 34 C.F.R. § 300.206, incorporated by reference above.

- F. Personnel development requirements shall be in accordance with 34 C.F.R. § 300.207, incorporated by reference above.
- G. Permissive use of funds shall be in accordance with 34 C.F.R. § 300.208, incorporated by reference above.
- H. Treatment of charter schools and their students shall be in accordance with 34 C.F.R. § 300.209, incorporated by reference above.
- I. Access to and purchase of instructional materials.
 - 1. General. Each public agency must:
 - a. Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as appendix C to part 300 of the Act, for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner; and
 - b. Each public agency must ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, and must take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials.
 - 2. Rights of LEA.
 - a. Nothing in this section shall be construed to require an LEA to coordinate with the NIMAC.
 - b. If an LEA chooses not to coordinate with the NIMAC, the LEA must provide an assurance to the SEA that the LEA will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
 - c. Nothing in this section relieves a public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities within § 1.6(l)(4) or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.
 - 3. Preparation and delivery of files. Each public agency that chooses to coordinate with the NIMAC must:
 - a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

- (1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
 - (2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.
 - b. Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
4. Assistive technology. In carrying out this section, the Public Agency, to the maximum extent possible, must work collaboratively with the SEA assistive technology program(s).
 - a. Definitions.
 - (1) In this section:
 - (AA) Blind persons or other persons with print disabilities means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a;
 - (BB) National Instructional Materials Access Center or NIMAC means the center established pursuant to § 674(e) of the Act;
 - (CC) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in § 674(e)(3)(B) of the Act;
 - (DD) Specialized formats has the meaning given the term in § 674(e)(3)(D) of the Act.
 - (2) The definitions in paragraph (4)(1) of this section apply to each public agency, whether or not the public agency chooses to coordinate with the NIMAC.
- J. Information for SEA shall be provided in accordance with 34 C.F.R. § 300.211, incorporated by reference above.
- K. Public information shall be made available in accordance with 34 C.F.R. § 300.212, incorporated by reference above.
- L. Records regarding migratory children with disabilities shall be in accordance with 34 C.F.R. § 300.213, incorporated by reference above.
- M. Exception for prior local plans shall be in accordance with 34 C.F.R. § 300.220, incorporated by reference above.
- N. Notification of LEA or State agency in case of ineligibility shall be in accordance with 34 C.F.R. § 300.221, incorporated by reference above.

- O. LEA and State agency compliance shall be in accordance with 34 C.F.R. § 300.222, incorporated by reference above.
- P. Joint establishment of eligibility shall be in accordance with 34 C.F.R. § 300.223, incorporated by reference above.
- Q. Requirements for establishing eligibility shall be in accordance with 34 C.F.R. § 300.224, incorporated by reference above.
- R. Early intervening services shall be in accordance with 34 C.F.R. § 300.226, incorporated by reference above.
- S. Direct services by the SEA shall be in accordance with 34 C.F.R. § 300.227, incorporated by reference above.
- T. Disciplinary information shall be in accordance with 34 C.F.R. § 300.229, incorporated by reference above; provided, however:
 - 1. Under 34 C.F.R. § 300.229(a), a public agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.
 - 2. Under 34 C.F.R. § 300.229(c), if the child transfers from one school to another, the transmission of any of the child's records shall include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

1.7 Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

1.7.1 Parental Consent

- A. Parental consent shall be obtained in accordance with 34 C.F.R. § 300.300, incorporated by reference above.

1.7.2 Evaluations and Reevaluations

- A. Initial evaluations shall be conducted in accordance with 34 C.F.R. § 300.301, incorporated by reference above; provided, however:
 - 1. Procedures and timeframe for initial evaluation shall be conducted pursuant to 34 C.F.R. § 300.301(c); provided, however:
 - a. Each public agency must ensure that:
 - (1) Within ten (10) school days of the receipt of a referral for special education services a team of qualified professionals and the parent that includes the individuals described in § 1.7.4(B) and other qualified

professionals, as appropriate, known as the Evaluation Team, meet to determine if a special education evaluation is needed.

- (2) The initial evaluation shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the public agency within five (5) school days of their consent to evaluate, the team must document its efforts to obtain consent. If the public agency has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the Evaluation Team must reconvene to consider what action the public agency will take including, (as appropriate) the requirements described in § 1.7.1 (34 C.F.R. § 300.300(a)).
 - (3) A full individual initial evaluation is conducted before the initial provision of special education and related services
 - b. Within sixty (60) calendar days of receipt of parental consent to an initial evaluation:
 - (1) The child is evaluated; and
 - (2) A written report of the Evaluation Team is made available to the public agency and the parent(s); and a team of qualified professionals and the parent(s) of the child meet as an eligibility team to determine whether the child is a child with a disability and in need of special education and related services.
 - c. If determined eligible under this part, an IEP meeting is conducted and an IEP is developed and special education and related services are made available to the child in accordance with an IEP within fifteen (15) school days of the eligibility determination.
 - d. If it is determined that an initial evaluation is not needed, the evaluation team shall consider referring the student's case back to general education for appropriate action.
 - B. A screening for instructional purposes is not an evaluation in accordance with 34 C.F.R. § 300.302, incorporated by reference above.
 - C. Reevaluations shall be conducted in accordance with 34 C.F.R. § 300.303, incorporated by reference above. In addition:
 1. Procedures and timeframe for reevaluation.
 - a. Each public agency must ensure that:
 - (1) The reevaluation shall commence no later than ten (10) school days after the receipt of parental consent to conduct such an evaluation. If the parent does not notify the public agency within five (5) school days of their consent to evaluate, the IEP Team must document its efforts to

obtain consent. If the public agency has not obtained parental consent to evaluate within fifteen (15) school days of the request to evaluate, the IEP Team must reconvene to consider what action the public agency will take including, (as appropriate) the requirements described in §1.7.1 (34 C.F.R. §300.300(c) and (d)).

- b. Within sixty (60) calendar days of receipt of parental consent to conduct a reevaluation:
 - (1) The child is reevaluated; and
 - (2) A written report of the IEP Team is made available to the public agency and the parent(s); and the IEP Team meets to determine continued eligibility for special education and related services.
 - c. If determined eligible under this part, the public agency must ensure that continued special education and related services are made available to the child.
- D. Evaluation procedures shall be in accordance with 34 C.F.R. § 300.304, incorporated by reference above, provided however:
 - 1. Other evaluation procedures shall be the same as 34 C.F.R. § 300.304(c)(1) with the following addition:
 - a. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child who is learning English as a second language, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's linguistic difference, in accordance with § 1.5.10(A).
- E. Additional requirements for evaluations and reevaluations shall be in accordance with 34 C.F.R. § 300.305, incorporated by reference above.
- F. Determination of eligibility shall be in accordance with 34 C.F.R. § 300.306, incorporated by reference above.

1.7.3 Additional Procedures for Identifying Children with Specific Learning Disabilities

- A. The procedure for identifying children with specific learning disabilities shall be in accordance with 34 C.F.R. § 300.307, incorporated by reference above. The State criteria for determining whether a student has a specific learning disability is as follows:
 - 1. Response to Intervention Process Basis
 - a. In one or more of the eight (8) areas below the student's performance meets the description under Achievement Gap and Educational Progress.
 - (1) Achievement Gap: evidence from multiple reliable and valid sources indicate that the student's current achievement of State-approved

Grade Level/Span Expectations and English Language Proficiency Standards is significantly different than his/her peers relative to national normative data with consideration of state and local data when provided with learning experiences and instruction appropriate for the child's age or state approved grade level/span expectations. The student's current achievement shall be determined after the provision of appropriate general education learning experiences including at least two periods of intensive interventions implemented with fidelity. English Language Learners shall additionally be provided with instruction appropriate for their English language proficiency.

- (2) Educational Progress. The student does not make sufficient progress to meet age or State-approved Grade Level/Span Expectations and English Language Proficiency Standards, based on child's limited responsiveness to intensive scientific, research-based interventions which have been implemented with fidelity. Insufficient progress is determined using multiple reliable and valid measures. The process of determining insufficient progress considers the student's rate of improvement towards meeting age or State-approved Grade Level/Span Expectations and English Language Proficiency Standards during intensive intervention, student's past rate of improvement, and a normative rate based on the response of his/her local age peers with consideration of national data.

- (AA) Oral expression.
- (BB) Listening comprehension.
- (CC) Written expression.
- (DD) Basic reading skill.
- (EE) Reading fluency skills.
- (FF) Reading comprehension.
- (GG) Mathematics calculation.
- (HH) Mathematics problem solving.

b. Other considerations.

- (1) Student performance in areas indicated above is not primarily the result of:
- (AA) A visual, hearing, or motor disability;
 - (BB) Intellectual disability;
 - (CC) Emotional disturbance;

- (DD) Cultural factors;
 - (EE) Environmental or economic disadvantage; or
 - (FF) Limited English Proficiency
 - (2) The determinant factor of the findings is not any of the following:
 - (AA) Student has lacked appropriate instruction in literacy.
 - (BB) Student has lacked appropriate instruction in math.
 - (CC) Student has had extended absences.
 - (DD) Student has had repeated change of schools.
 - (EE) Student has had an inconsistent or inappropriate educational program.
- B. Additional group members shall be in accordance with 34 C.F.R. § 300.308, incorporated by reference above.
- C. Determining the existence of a specific learning disability shall be in accordance with 34 C.F.R. § 300.309, incorporated by reference above.
- D. Observation shall be in accordance with 34 C.F.R. § 300.310, incorporated by reference above.
- E. Specific documentation for the eligibility determination shall be in accordance with 34 C.F.R. § 300.311, incorporated by reference above. In addition to the requirements of 34 C.F.R. § 300.311(a), the documentation must also contain:
 - a. If the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, recommendations for tailoring instruction and interventions to support the child's progress;

1.7.4 Individualized Education Programs

- A. "Individualized education program" shall mean the same as used in 34 C.F.R. § 300.320, incorporated by reference above; provided, however:
 - 1. Under 34 C.F.R. § 300.320(a), as used in this Part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 1.7.4(A) through 1.7.5(A) and must also include:
 - a. A statement of measurable annual goals, including academic and functional goals and short- term objectives, aligned, where applicable, to the child's personal literacy and/or individual learning plan, designed to:
 - (1) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

- (2) Meet each of the child's other educational needs that result from the child's disability;
2. Transition services shall be in accordance with 34 C.F.R § 300.320(b), provided, however, this section shall apply to a child with a disability beginning at age fourteen (14), or younger, if determined appropriate by the IEP Team.
- B. IEP Team shall be in accordance with 34 C.F.R. § 300.321, incorporated by reference above; provided, however, the representative of the public agency referenced in 34 C.F.R 300.321(a)(4)(iii) must also have the authority to commit the resources of the public agency.
- C. Parent participation shall be in accordance with 34 C.F.R. § 300.322, incorporated by reference above; provided, however:
 1. Pursuant to 34 C.F.R § 300.322(a), the public agency shall:
 - a. Schedule the IEP meeting within ten (10) school days of a request by the parent or the LEA to meet to review the child's IEP,
 - b. Schedule the meeting at a mutually agreed on time and place, and
 - c. Notify parents of the meeting ten (10) school days prior to the meeting to ensure that they will have an opportunity to attend (the parent may agree to waive the ten (10) day notice requirement in order to expedite the IEP Team meeting).
 2. The notice required under 34 C.F.R § 300.322(b)(2) must be provided for a child with a disability beginning at age fourteen (14) or younger, if determined appropriate by the IEP Team. The notice must:
 - (1) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 1.7.4(A)(2); and
 - (2) Indicate that the agency will invite the student; and
 - (3) Identify any other agency that will be invited to send a representative.
 3. Under 34 C.F.R § 300.322(f), the public agency must give the parent a copy of the child's IEP at no cost to the parent and not later than ten (10) calendar days after:
 - a. An IEP has been developed for the child; and
 - b. After the receipt of a request for a copy of the IEP.
- D. When IEPs must be in effect shall be in accordance with 34 C.F.R. § 300.323, incorporated by reference above; provided, however:
 1. Initial IEPs; provision of services shall be pursuant to 34 C.F.R. § 300.323(c); provided, however, each public agency shall ensure that:

- a. A meeting to develop an IEP for a child is conducted within fifteen (15) school days of a determination that the child needs special education and related services; and
 - b. As soon as possible following development of the IEP, but not later than ten (10) school days, special education and related services are made available to the child in accordance with the child's IEP.
2. IEPs for children who transfer public agencies in the same State, under 34 C.F.R. § 300.323(e), shall remain in effect pursuant to R.I. Gen. Laws § 16-4-21(e).

1.7.5 Development of IEP

- A. The development, review, and revision of IEPs shall be in accordance with 34 C.F.R. § 300.324, incorporated by reference above.
- B. Private school placements by public agencies shall be in accordance with 34 C.F.R. § 300.325, incorporated by reference above.
- C. Educational placements shall be in accordance with 34 C.F.R. § 300.327, incorporated by reference above.
- D. Alternative means of meeting participation shall be in accordance with 34 C.F.R. § 300.328, incorporated by reference above.

1.8 Procedural Safeguards

1.8.1 Due Process Procedures for Parents and Children

- A. Responsibility of SEA and other public agencies shall be in accordance with 34 CFR § 300.500, incorporated by reference by above.
- B. Opportunity to examine records; parent participation in meetings shall be in accordance with 34 C.F.R. § 300.501, incorporated by reference above; provided, however:
 1. Parent involvement in placement decisions shall be in accordance with 34 C.F.R. § 300.501(c). In addition:
 - a. The LEA shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for sign or language interpreters.
- C. Independent educational evaluation shall be in accordance with 34 C.F.R. § 300.502, incorporated by reference above; provided, however:
 1. If a parent requests an independent educational evaluation at public expense, the public agency shall comply with 34 C.F.R. § 300.502(b) not later than fifteen (15) calendar days from receipt of a request.
- D. Prior notice by the public agency; content of notice, shall be in accordance with 34 C.F.R. § 300.503, incorporated by reference above; provided, however:

1. The written notice required by 34 C.F.R. § 300.503(a) shall be given within ten (10) school days.
- E. Procedural safeguards notice shall be in accordance with 34 C.F.R. § 300.504, incorporated by reference above; provided, however that the notice required in 34 C.F.R. § 300.504(c) shall also include a full explanation of the procedural safeguard available under 1.8.1(U).
- F. The use of electronic mail shall be in accordance with 34 C.F.R. § 300.505, incorporated by reference above.
- G. Mediation. The SEA shall offer and implement a conflict resolution procedure called "mediation" in accordance 34 C.F.R. § 300.506, incorporated by reference above; provided, however:
 1. Under 34 C.F.R. § 300.506(a), each public agency must ensure that procedures are established to implement 34 C.F.R. § 300.506(a), including referring a party seeking mediation to the SEA.
- H. The filing of a due process complaint shall be subject to the provisions of 34 C.F.R. § 300.507, incorporated by reference above.
- I. Due process complaints shall be in accordance with 34 C.F.R. § 300.508, incorporated by reference above.
- J. The development and use of model forms shall be provide in accordance with 34 C.F.R. § 300.509, incorporated by reference above.
- K. The resolution process shall be in accordance with 34 C.F.R. § 300.510, incorporated by reference above.
- L. Impartial due process hearings shall be conducted in accordance with 34 C.F.R. § 300.511, incorporated by reference above; provided, however:
 1. Under 34 C.F.R. § 300.511(b), the SEA shall establish, implement, determine financial responsibility, and develop procedures for administering a system of due process under this section.
- M. Hearing rights shall be provided in accordance with 34 C.F.R. § 300.512, incorporated by reference above.
- N. Hearing decisions shall be issued in accordance with 34 C.F.R. § 300.513, incorporated by reference above.
- O. Finality of decision; appeal.
 1. Finality of hearing decision. A decision made in a hearing conducted pursuant to § 1.8.1(H) - (N) or § 1.8.2(A) - (E) is final, except that any party involved in the hearing may appeal the decision under the provisions of § 1.8.1(Q).
- P. Timelines and convenience of hearings and reviews shall be in accordance with 34 C.F.R. § 300.515, incorporated by reference above.

- Q. Civil actions may be brought in accordance with 34 C.F.R. § 300.516, incorporated by reference above; provided, however:
1. General. Under 34 C.F.R. § 300.516(a), any party aggrieved by the findings and decision made under § 1.8.1(H) - (N) or § 1.8.2(A) - (E) has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under § 1.8.1(H) or § 1.8.2(A) - (C). The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
 2. Time limitation. Under 34 C.F.R. § 300.516(b) the party bringing the action shall have thirty (30) days from the date of the receipt of the decision of the hearing officer to file a civil action.
- R. Attorneys' fees shall be in accordance with 34 C.F.R. § 300.517, incorporated by reference above.
- S. Child's status during proceedings shall be in accordance with 34 C.F.R. § 300.518, incorporated by reference above.
- T. The assignment of surrogate parents shall be in accordance with 34 C.F.R. § 300.519, incorporated by reference above.
- U. Transfer of parental rights at age of majority.
1. When a child with a disability reaches the age of eighteen (18) under R.I. Gen. Laws § 15-12-1 (except for a child with a disability who has been determined to be incompetent under State law):
 - a. The public agency must provide any notice required by this part to both the child and the parents; and
 - b. All rights accorded to parents under Part B of the Act transfer to the child;
 2. All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and
 3. The public agency must notify the child and the parents of the transfer of rights.

1.8.2 Discipline Procedures

- A. Authority of school personnel; emergency removal. Section 34 C.F.R. § 300.530 (c) through (h) is incorporated by reference above.
1. Section 34 C.F.R § 300.530(a) is superseded by the following (Case-by-case determination):
 - a. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

- b. If school personnel determine that a child with a disability presents an immediate threat to him or herself or to others, the child may be removed from school for the remainder of the school day regardless of the number of days of suspension the child had already accrued during that school year.
 - c. For any emergency removal under paragraph (b) of this section the public agency must follow the requirements of this section.
- 2. Section 34 C.F.R. § 300.530(b) is superseded by the following (School Removal):
 - a. Removals for less than ten (10) days cumulative. School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to children without disabilities).
 - (1) During the first ten (10) school days of removal (cumulative) during the course of a school year, a public agency may, but is not required to:
 - (AA) Provide educational services to the child;
 - (BB) Conduct a manifestation determination prior to the disciplinary removal;
 - (CC) Perform a functional behavioral assessment of the child; or
 - (DD) Develop a behavioral intervention plan to address the behavioral factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.
 - b. Removals for more than ten (10) days cumulative. After a child with a disability has been removed from his or her current placement for more than ten (10) school days cumulative in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (4) of this section.
- B. Determination of setting shall be in accordance with 34 C.F.R. § 300.531, incorporated by reference above.
- C. Appeals and expedited due process hearings shall take place in accordance with 34 C.F.R. § 300.532, incorporated by reference above; provided, however:
 - 1. An expedited due process hearing shall be in accordance with 34 C.F.R. § 300.532(c), except that the expedited due process hearing must conclude within twenty (20) school days of the date that the complaint requesting the hearing is filed.
- D. The child's placement during an appeal shall be in accordance with 34 C.F.R. § 300.533, incorporated by reference above.

- E. Protections for children not determined eligible for special education and related services shall be in accordance with 34 C.F.R. § 300.534, incorporated by reference above.
- F. Referral to and action by law enforcement and judicial authorities shall be in accordance with 34 C.F.R. § 300.535, incorporated by reference above.
- G. Change of placement because of disciplinary removals.
 - 1. For purposes of removals of a child with a disability from the child's current educational placement under § 1.8.2(A) - (F), a change of placement occurs if the removal is for more than ten (10) school days cumulative in the same school year.

1.9 Monitoring, Enforcement, Confidentiality, and Program Information

1.9.1 Monitoring, Technical Assistance, and Enforcement

- A. State Monitoring and enforcement shall be in accordance with 34 C.F.R. § 300.600, incorporated by reference above.

1.9.2 Confidentiality of Information

- A. As used in § 1.9.2, the definitions of "destruction," "education records," and "participating agency" shall be in accordance with 34 C.F.R. § 300.611, incorporated by reference above.
- B. Notice to parents shall be given by the SEA in accordance with 34 C.F.R. § 300.612, incorporated by reference above.
- C. Access rights shall be in accordance with 34 C.F.R. § 300.613, incorporated by reference above; provided, however:
 - 1. Under 34 C.F.R. § 300.613(a), each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 1.8.1(H) or §1.8.2(A) - (C), or resolution session pursuant to § 1.8.1(K), and in no case more than ten (10) calendar days after the request has been made.
- D. Record of access shall be in accordance with 34 C.F.R. § 300.614, incorporated by reference above.
- E. Records on more than one child shall be in accordance with 34 C.F.R. § 300.615, incorporated by reference above.
- F. List of types and locations of information shall be in accordance with 34 C.F.R. § 300.616, incorporated by reference above.
- G. Fees shall be in accordance with 34 C.F.R. § 300.617, incorporated by reference above.
- H. Amendment of records at parent's request shall be in accordance with 34 C.F.R. § 300.618, incorporated by reference above.

- I. Opportunity for a hearing shall be in accordance with 34 C.F.R. § 300.619, incorporated by reference above.
- J. Result of hearing shall be in accordance with 34 C.F.R. § 300.620, incorporated by reference above.
- K. Hearing procedures shall be in accordance with 34 C.F.R. § 300.621, incorporated by reference above.
- L. Consent shall be in accordance with 34 C.F.R. § 300.622, incorporated by reference above.
- M. Safeguards of confidentiality shall be in accordance with 34 C.F.R. § 300.623, incorporated by reference above.
- N. Destruction of information shall be in accordance with 34 C.F.R. § 300.624, incorporated by reference above.

1.9.3 Reports - Program Information

- A. Disproportionality. Disproportionality shall be in accordance with 34 C.F.R. § 300.646, incorporated by reference above.
- B. Determining significant disproportionality shall be in accordance with 34 C.F.R. § 300.647, incorporated by reference above.

1.10 Additional Requirements

1.10.1 Local Advisory Committee on Special Education

- A. Local advisory committee on special education (LAC).
 - 1. The school committee of each local educational or regional special education program shall appoint an Advisory Committee on Special Education. The school committee shall approve the by-laws of the advisory committee.
 - 2. Membership: Each local or regional committee shall be composed of persons involved in or concerned with the education of students with disabilities. Parents of students with disabilities shall compose a majority of the committee membership, and at least fifty percent (50%) of this majority shall be selected by the parents of students with disabilities. A regional committee shall reflect an equal distribution of representatives from each of the school districts that comprise the regional program. Membership shall include an individual with a disability, a public school administrator, a special education teacher, a general education teacher and other members of the community at the discretion of the committee and school board.
 - 3. Functions and Responsibilities of the LAC: The committee shall advise the school district or regional program on matters concerning the unmet needs of students with disabilities, comment on improvement plans including school support plans resulting from IDEA Part B compliance reports, local compliance with state and federal laws pertaining to the education of students with disabilities, comment on applications for federal and state funds and serve as advocates in partnership with parents for students

with disabilities to ensure that they receive the entitlements provided to them under state and federal laws.

4. Duties and Responsibilities of the Local or Regional Agency: The local or regional educational agency shall provide support to the committee by contracting for technical assistance services with the Rhode Island designated Parent Training and Technical Assistance Agency or other community- based non-profit parent organization. Such technical assistance shall include the role of advisory committees in advocating for children, state and federal regulations, community resources, strategic planning and development of an annual report to the school committee. The local or regional educational agency shall also provide school and district improvement plans to the committee for comment and make available appropriate records and data as permitted by law. The public agency shall also support the committee in disseminating information to parents of students regarding the role of the advisory committee, information pertaining to special education and inform the committee of professional development opportunities that are available within the LEA.
5. Conduct of Meetings: The committee shall meet as often as necessary to conduct its business but at least four times annually. Official minutes shall be kept of all committee meetings and be available for public review. All committee meetings and agendas shall be publicly announced prior to any meeting, and meetings shall be open to the public.
6. Members of the committee shall serve without compensation but may be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.
7. Parent Notification of Local or Regional Advisory Committee: When a child is referred to special education, each school district or regional special education program shall provide the parents with notification of the existence of the Local or Regional Advisory Committee for Special Education established in compliance with this Part. The notification shall specify that a majority of the Local Advisory Committee (LAC) on Special Education is parents of children with disabilities, and shall inform the parents how the chairperson of the Local Advisory Committee (LAC) for Special Education or the Regional Advisory Committee on Special Education may be contacted.

1.10.2 Regional Transition Services Advisory Committee

- A. Regional transition services advisory committee (TAC).
 1. Within each of the legislatively created Collaboratives and Providence, there shall be a Transition Advisory Committee (TAC) that will conform to guidelines issued by RIDE. The membership of the TAC shall meet monthly during the school year. By the first of July of each year, the TAC shall submit to the State Transition Council an annual report of activities and recommendations.

1.10.3 Transportation

- A. Transportation services for children with disabilities.

1. Responsibility. All students with disabilities who need special transportation as a related service and as determined by the evaluation process and described in the individual education program (IEP) shall be provided such service. It shall include free transportation from home to the educational program in which the child is enrolled. It shall also include free transportation to and from the clinical, diagnostic and therapeutic facilities when the clinical, diagnostic and therapeutic services are necessary to complete the child's evaluation or to provide the services required in the child's IEP.
2. Specific Requirements.
 - a. Appropriate devices, which accommodate specific transportation needs of the child, must be provided on an individualized basis.
 - b. A minimum of one (1) aide must be assigned to each bus used for special transportation. Such aide, in addition to providing general care and supervision to all children with disabilities on such bus, shall also provide assistance (from street level entrance of the child's dwelling) to such children lacking the mobility to leave the home and board transportation vehicles, and shall further assist such children in disembarking the vehicle and entering school. When children are transported to clinical, diagnostic or therapeutic facilities, determination of whether a bus aide is necessary shall be based on the judgment of the IEP Team.
 - c. School districts shall provide in-service training for administrative personnel, drivers and aides providing special education transportation services in order that they may effectively deal with the children with disabilities and understand the issues and concerns of the parents of such children.
 - d. Scheduling of transportation vehicles shall be planned whenever possible in such a manner as to provide for the least amount of travel time necessary to transport children with disabilities from home to school and back home again. When travel time for children with disabilities who are receiving special transportation is found to exceed one (1) hour to or from the location of special education services, the parent(s) shall be notified in writing. This notice will include the reason(s) for the duration of the travel time and the notification must include a description of the parent(s) right to an appeal. The school district will submit a copy of the notification to the Director of the Office of Student, Community and Academic Supports at RIDE. This notice will include the reason(s) for the duration of the travel time.
 - e. All vehicles used in the transportation of children with disabilities as a related service shall be equipped with two-way communication devices in case of an emergency.

1.10.4 Non-Public and State Operated School Programs

- A. Non-public and State operated school programs.

1. To be eligible for approval by RIDE, special education programs conducted in private and state- operated schools in Rhode Island shall meet the regulations governing the approval of school programs. Private and state operated school programs shall be evaluated in the same manner, on the same schedule and with the same criteria and procedures as utilized for public schools in Rhode Island and shall be subject to on-site visits by the Rhode Island Commissioner of Elementary and Secondary Education or the Commissioner's authorized representative as often as is deemed necessary by RIDE. Approval of such programs shall be on a triennial basis.
2. All special education programs in any private and state operated day or residential school shall meet the same standards as those established for public school programs.
3. Private and state operated school programs shall provide services by appropriately certified personnel in accordance with the needs of the students with disabilities to be served, as determined by the IEP process. Caseloads for specialized personnel shall be assigned based on the time required to meet the needs of children with disabilities, as determined by the IEP process.
4. Monitoring of a child's progress in a private day or residential school program shall be conducted by the special education director or designee, trained in the child's area of need, who shall be from the school district where the child resides.
5. Special Education programs for children with disabilities in state operated schools shall be monitored by RIDE.
6. Private day or residential programs shall employ a certified administrator of special education, whose basic responsibilities shall be the overall administration and supervision of the special education program, and whose schedule shall be determined based on the time required to meet the needs of the children with disabilities
7. Each private day and residential school program shall have a statement of financial stability which identifies sufficient assets to establish and maintain a satisfactory program of education on a continuing basis. The owner(s) of a school, whether for initial approval or renewal of approval, shall also furnish statements of income and retained earnings and changes in financial position. These statements shall include in a clearly identifiable manner, records of receipts and expenditures, personnel salaries, and tuition. All statements shall be prepared by a Public Accountant or Certified Public Accountant, but need not be certified by the Accountant or supported by an audit. These statements shall be accompanied by a notarized statement by the owner(s) or the director of the school that the financial statements are true and correct, and shall identify the name of the Public Accountant or Certified Public Accountant who prepared the statements.
8. Information on tuition and/or fee schedule shall be submitted to RIDE in accordance with forms and instructions supplied by RIDE as part of the school approval application.
9. Each non-public day and residential school program shall use and have available for inspection written administrative procedures that encompass the following:

- a. Provision for emergency and early termination of children including prior consultation with the special education director in the school district of the child's residence in order to provide for an orderly transfer of responsibility back to this special education director.
 - b. Provision of procedural safeguards which cover the same areas required for public schools.
 - c. Provision for parental involvement including parental education and counseling.
 - d. Provision for staff training.
 - e. Provision of measures which protect all students from exposure to humiliation or verbal abuse or any form of corporal punishment that could be construed as cruel or severe.
 - f. Provision of written reports on each child which are mailed to the child's parents and the special education director in the child's resident school district at least as often as the public school district reports progress to parents of non-disabled children.
10. State responsibility.
- a. In ensuring that each LEA meets their responsibilities under §1.5.4 (A) through (C) of this Part, RIDE shall:
 - (1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
 - (2) Disseminate copies of applicable standards to each private school and facility to which an LEA has referred or placed a child with a disability; and
 - (3) Provide an opportunity for those private schools and facilities to participate in development and revision of State.